IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.413 of 2005

Sou. Ambutai Suryakant Bharade .. Appellant.
V/s.
1. Vishwanath Shivlingappa Gandage
and Anr. .. Respondents.

Shri Amit Sale for Appellant.

Shri Nitin Jamdar for Respondent nos.1 & 2.

CORAM: ABHAY S. OKA J.
28th April, 2005.

P.C.

1. Heard the Advocates appearing for the parties. The Appellant is the grand-daughter of the respondents/plaintiffs. The case of the respondents is that a permission was granted by them to the appellant to occupy the suit property for a temporary period. As the appellant declined to vacate the suit premises, the respondents filed a suit for mandatory injunction. The suit was defended by the appellant by contending that she was the tenant in respect of the suit premises. The Trial Court held that the appellant has failed to prove that she is a tenant and it was held that she was merely a licensee. However, a decree for possession was not passed as according to Trial Court such a decree could not be passed in the suit in which mandatory injunction was prayed for.

2. The appeals were preferred by both the parties to the District Court. The Respondents were permitted to amend the plaint for incorporating the prayer for possession. The Appellate Court also recorded a finding that appellant has failed to prove that she was a tenant in respect of the suit premises. The Appellate Court held that the respondents were entitled to a decree of possession in respect of the suit premises.

3. After hearing the Advocates for the parties, I find that there is no merit in the appeal and appeal is liable to be dismissed.

4. At this stage the learned advocate for the appellant prayed for longer time to vacate. The learned counsel appearing for the respondents pointed out that both the respondents are above the age of 80 years and they are prosecuting the suit from 1998. Therefore, the prayer for grant of longer time cannot be accepted.

5. Hence, I pass the following order:-

1. Appeal is dismissed with no order as to costs.

2. The Appellant is granted three months

time to vacate the suit premises on her furnishing usual undertaking.

3. In view of the above order Civil Application no.604 of 2005 does not survive and the same is rejected.